

EXHIBIT 5

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

ELIZABETH SINES, et al.,

No. 3:17-cv-72

Plaintiffs,

Charlottesville, Virginia

vs.

January 4, 2019

2:04 p.m.

JASON KESSLER, et al.,

Defendants.

TRANSCRIPT OF TELEPHONIC MOTION HEARING
BEFORE THE HONORABLE JOEL C. HOPPE
UNITED STATES MAGISTRATE JUDGE.

APPEARANCES:

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Also Present: ROBERT AZZMADOR RAY

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Proceedings recorded by FTR; computer-assisted transcription.

1 (Call to Order of the Court at 2:04 p.m.)

2 THE COURT: Hi. This is Joel Hoppe.

3 Who is on the line for the plaintiffs?

4 MS. TENZER: Good afternoon, Your Honor. This is
5 Gabrielle Tenzer from Kaplan Hecker & Fink, on behalf of the
6 plaintiffs. And I'm here with my colleagues Robbie Kaplan and Alan
7 Levine from the Cooley firm. And there may be others on the line
8 as well.

9 THE COURT: Okay. Good afternoon.

10 And then how about for Mr. Ray and Mr. Heimbach?

11 MR. KOLENICH: Good afternoon, Judge. Jim Kolenich for
12 Mr. Ray and Mr. Heimbach.

13 THE COURT: Good afternoon, Mr. Kolenich.

14 And then, Mr. Ray and Mr. Heimbach, are you on the phone
15 as well.

16 MR. RAY: I'm Robert Ray. I am on the phone.

17 THE COURT: Okay. All right. So we have Mr. Ray.

18 How about -- is anybody else on the line?

19 (No response.)

20 THE COURT: Okay.

21 All right. Well, thank you-all for calling in. This
22 hearing is being recorded by the Court's FTR system, so there is a
23 record of it.

24 And there are a number of things that I wanted to
25 address. You know, one is the -- Mr. Kolenich's second motion to

1 withdraw from representing Mr. Ray and Mr. Heimbach. And then also
2 there was a letter that plaintiffs filed concerning some discovery
3 issues, but more about extending the fact discovery deadline.

4 And then just recently there was a filing of a suggestion
5 of bankruptcy, Mr. Kolenich, by -- regarding Mr. Damigo. And it
6 may be helpful to have everybody on the phone for that. But I also
7 wanted to just kind of hear what you-all -- what your thoughts were
8 as to the impact of that for the case at this point.

9 Why don't -- why don't we address the suggestion of
10 bankruptcy first. And, Mr. Kolenich, what -- do you have any
11 suggestions -- you know, it is a stay of all proceedings as to
12 Mr. Damigo. What is your assessment of the impact on the overall
13 case?

14 MR. KOLENICH: Your Honor, I -- it is my understanding
15 -- and I'm not a routine bankruptcy practitioner, although I have
16 done some of these adversary proceedings -- that until further
17 order of the bankruptcy judge, nothing else can be done regarding
18 Mr. Damigo. It has no effect on the rest of the case.

19 THE COURT: All right. And, Ms. Tenzer or Ms. Kaplan or
20 Mr. Levine, what are your views on that?

21 MR. LEVINE: It is Levine, Your Honor.

22 THE COURT: Levine. Excuse me.

23 MR. LEVINE: So we are currently evaluating the impact of
24 it. But we expect to make a motion in the federal bankruptcy court
25 to relieve the stay to permit Mr. Damigo to proceed -- the claim

1 against Mr. Damigo to proceed here. But I am not prepared to say
2 when we are doing that. We are looking at it right now. And we
3 are going to do whatever we are going to do as quickly as possible.

4 THE COURT: Okay. All right.

5 Well, then, let's go ahead and move on to the other
6 issues. As to the request to extend discovery to the -- it would
7 be to the expert disclosure -- or the deadline for expert
8 discovery, as I understand it, which would be 75 days before trial,
9 is that what you-all were proposing?

10 MR. LEVINE: Your Honor, it is Alan Levine again.

11 When we were -- what we proposed was that the close of
12 fact discovery be moved to April 24, which is the date of the close
13 of expert discovery and also happens to be the date under your
14 order that dispositive motions are filed. We don't see a reason
15 right now to interfere with the Court's order from June 15, 2018,
16 that required expert discovery to be completed 75 days before
17 trial, because we don't believe necessarily that the expert
18 discovery has to -- has to follow the fact discovery as this case
19 is now playing out.

20 The -- from our vantage point, we're going to -- we have
21 tendered dates for the plaintiffs for their depositions. And I
22 -- my expectation is that those depositions will take place in more
23 than enough time for the defendants, if they so choose to get
24 expert discovery of physicians or other medical experts in respect
25 of the damages. We have provided -- we have provided the

1 information in respect of the plaintiffs' doctors, etc. So the
2 defendants have that information.

3 As far as experts on the plaintiffs' side, on our side,
4 at the present time, Your Honor, we haven't really decided if we
5 are going to have experts. But we're almost certain that they
6 -- that expert -- any such experts would not be connected to the
7 completion of fact discovery. And so I don't think that one would
8 have to follow the other in the traditional sense.

9 So at this time we're trying to hold tight to the Court's
10 trial date, although -- although you might hear from us at a later
11 point. But right now we're definitely trying to hold tight to that
12 date. And we're just trying to move the fact discovery date to a
13 time that is more realistic given all of the difficulties that we
14 know the Court is aware of that we have had in getting ESI
15 discovery and Discord discovery.

16 THE COURT: All right. And, Mr. Levine, at this time you
17 don't anticipate that the plaintiffs would be filing any
18 dispositive motions; is that correct?

19 MR. LEVINE: That's right, Your Honor.

20 THE COURT: All right. And the deadline to exclude
21 experts also falls at that dispositive motions' deadline, which is
22 75 days before trial. So that's just something else to keep in
23 mind.

24 Mr. --

25 MR. LEVINE: Understood.

1 THE COURT: All right.

2 And I think I have heard some chimes, so I'm wondering if
3 anybody else has called in.

4 MR. DiNUCCI: Yes, Your Honor. This is John DiNucci. I
5 got tied up with something else. My apologies. I just called in
6 at the tail end of Mr. Levine's comments.

7 THE COURT: Okay.

8 MR. MILLS: And this is David Mills and Jessica Phillips
9 have also joined in. We're just going to put it on mute.

10 THE COURT: All right.

11 All right. Well, let me -- what we were talking about
12 was the extension of fact discovery to April 24th, which is 75 days
13 before trial.

14 Do any of the defendants think that you may be filing for
15 summary judgment?

16 Mr. Kolenich?

17 Mr. Kolenich, are you still there?

18 MR. KOLENICH: I'm sorry, Your Honor. I had it muted.

19 Yes, we do anticipate filing for summary judgment,
20 although, admittedly, that's heavily dependent on the remaining
21 fact discovery.

22 THE COURT: Okay. Do you -- do you think that -- pushing
23 the discovery -- the fact discovery deadline back to the same
24 deadline as that for filing dispositive motions, is that going to
25 cause any problems for you in filing those motions?

1 MR. KOLENICH: We don't have any objection to pushing the
2 fact discovery deadline back. As far as it being on the very day
3 it is due, I don't think it will. I think that they have proffered
4 dates. We should be able to work with them. This whole expert
5 thing, you know, they haven't identified experts yet. So, I don't
6 know, as long as the Court is aware that there may be issues that
7 come up with that date. But I think I'm satisfied for now. I
8 should be able to work with that date as things stand right now.

9 THE COURT: All right.

10 Mr. DiNucci, how about from your perspective?

11 MR. DiNUCCI: I do anticipate, Your Honor, preparing and
12 filing a motion for summary judgment. As far as the impact on such
13 a motion from any extension of the fact discovery cutoff, I guess
14 that's something I'm just going to have to live with, although I
15 suppose I could be filing a motion only to find out that at the
16 last minute I get hit with a slew of information that says it was a
17 waste of time filing the summary judgment motion. But I have to
18 live with it. But I do not oppose an extension of the discovery
19 cutoff. Given certain circumstances, I think I need it myself.

20 The one comment I would like to make in that vein -- and
21 it ties into the colloquy about experts -- unless I have missed
22 something, I haven't seen any material medical records from any of
23 the plaintiffs, most particularly mister -- I think his name is
24 Magill, who indicates he had a stroke because of certain alleged
25 events. I mean, I'm sort of handicapped right now, without that

1 information, because I have nothing to give to an expert on my side
2 to start to analyze and see if we're going to designate -- defense
3 collectively designate somebody on certain critical issues.

4 THE COURT: All right.

5 Mr. Levine, on -- do you -- is there some medical
6 discovery that you anticipate providing for that plaintiff? Or do
7 you think --

8 MS. TENZER: Your Honor, this is Gabrielle Tenzer. Hi.

9 We have -- as we discussed with Mr. DiNucci, we have
10 gotten HIPPA releases and received medical records for the
11 plaintiffs, which are -- or have for the large part been produced
12 to Mr. DiNucci. We also have recently requested updated medical
13 records and records that go back farther in time, partially in
14 response to requests from Mr. DiNucci. So those we have been
15 producing and will continue to produce as -- you know, consistent
16 with our obligations under the rules.

17 THE COURT: All right. You think that you already have
18 provided the medical records for that plaintiff?

19 MS. TENZER: It is my understanding that we have produced
20 medical records for all of the plaintiffs except for Plaintiffs Doe
21 and Magill, as Mr. DiNucci pointed out. And that's the current
22 status.

23 MR. DiNUCCI: Could I interject a comment, Your Honor?

24 THE COURT: Sure.

25 MR. DiNUCCI: Mr. DiNucci here.

1 Judge, I personally have not seen the medical records
2 being alluded to, with respect to very limited exceptions. And one
3 of the issues -- and it is not -- I guess technically it is
4 certainly not before the Court, but what is making review of
5 records difficult here is the documents are being produced not
6 -- they are not labeled to correspond with the document requests.
7 And so we're having to pour through thousands and thousands of
8 pages to try to isolate documents that are most important at this
9 point. I'm looking at -- you know, I'm focused on damages and
10 medical records. And I just haven't seen something. But there's
11 some buried in there. But, by and large, I haven't seen medical
12 bills, for example. I haven't seen psychological evaluations or
13 psychiatric evaluations of any of the plaintiffs. And I think for
14 most -- some are complaining of hard tissue injuries and we have
15 Mr. Magill and the alleged stroke, but for the rest it seems that
16 the damage claim is primarily psychological. I don't have any
17 evaluations.

18 THE COURT: All right.

19 MR. DiNUCCI: And if I've missed something, I'll eat crow
20 big time. But perhaps plaintiffs' counsel could help me out and
21 give me some Bates numbers, because otherwise I have got to go back
22 through about 10,000 pages of paper. I haven't just seen them.

23 MS. TENZER: Your Honor, it is Gabrielle Tenzer again.

24 We have produced the records. And as we've discussed
25 with Mr. DiNucci, we believe that we have complied with the federal

1 rules for production of ESI. And there's no requirement that we
2 tie them specifically to specific requests. But in response, one,
3 I think we have identified medical records to the extent that they
4 are responsive to specific interrogatories that have been posed.
5 We've served with our discovery a cover letter each time that
6 provides the Bates ranges that are being produced and then
7 specifically identify particular Bates ranges that are responsive
8 to particular interrogatories.

9 I would also suggest, having seen some of them, the
10 medical records are pretty obvious in certain respects. They are
11 large sort of chunks of documents. A lot of them are from UVA.
12 And that's all I can say at this point.

13 THE COURT: Are you making that same identification,
14 particular Bates numbers, for the request for productions of
15 documents as well, with the exception of any ESI --

16 MS. TENZER: No. Because of the way that we have
17 answered the interrogatories, where we say that we will, under Rule
18 I think it is 33(d), you know, produce documents -- business
19 records type documents that are -- that provide the information in
20 response to the interrogatory, we have been providing those
21 specifically because that's sort of part of the .rog response.

22 But it is our -- it is our interpretation of the rules
23 that there's no requirement under the federal rules to specifically
24 identify Bates ranges as being responsive to particular document
25 requests.

1 THE COURT: All right.

2 Mr. DiNucci --

3 MS. TENZER: Yeah, I mean, I -- I -- we have met and
4 conferred with Mr. DiNucci about this. You know, I can confer with
5 my team and we can see if we can provide him the specific Bates
6 ranges for the medical records, if that will move the process
7 along.

8 THE COURT: Yeah. I think that would be helpful. If
9 there are 20 requests for production of documents, I hope that you
10 are not just delivering, you know, written responses to those
11 without identifying any documents and then a bankers box or a CD
12 with a couple thousand documents that don't have any -- you know,
13 that aren't associated with any particular request.

14 MS. TENZER: We would be happy to go back and identify
15 the medical records by Bates ranges for Mr. DiNucci and the other
16 defendants.

17 THE COURT: Okay. All right.

18 MS. TENZER: Mr. DiNucci did serve over a hundred
19 document requests, so --

20 MR. DINUCCI: That's correct. I have a very voluminous
21 document request. But those requests for medical records are
22 limited in number. And as I recall, nothing that has been produced
23 has been labeled to correspond to the document request. And with
24 respect to interrogatory answers and allusion to a reference to
25 documents and Bates numbers in response to interrogatories, I have

1 got -- we have issues that I don't want to bore the Court with now
2 about the sufficiency of the interrogatory answers. So I'll be
3 taking that up with Ms. Tenzer again.

4 THE COURT: Okay.

5 MR. DiNUCCI: But I'll leave it at that.

6 THE COURT: All right. All right.

7 Well -- all right. So, from the defendants' perspective,
8 it sounds like it may be -- it may be necessary to back up the fact
9 discovery deadline just a bit, you know, maybe -- maybe a week or
10 so, to allow for fact discovery to close a bit in advance of
11 dispositive motions deadline. I'm fine with extending fact
12 discovery. I think that is necessary given how the discovery has
13 gone. But I think it probably makes sense to set the close of fact
14 discovery at, let's say, April 17th, to allow a little bit of time
15 in between the two deadlines.

16 MR. LEVINE: That works. Thank you, Your Honor.

17 THE COURT: All right. Mr. Levine, are there also some
18 outstanding issues about the defendants' compliance with the ESI
19 protocol?

20 MR. LEVINE: I think Ms. Tenzer will tackle that issue.
21 That's her baby.

22 THE COURT: Sorry. Ms. Tenzer.

23 MS. TENZER: Thank you, Your Honor.

24 I think you are talking about what we refer to as now the
25 imaging stip, the issues that we had discussed previously and the

1 order that Your Honor entered. And we have made some progress on
2 that.

3 The one thing I would like to note, we -- under the order
4 there is supposed to be a third-party discovery vendor that is
5 going to be doing the imaging and hosting the documents for the
6 defendants' counsel to review. The next step in the process is to
7 have the contract entered into by all of the parties. We have sent
8 the contract to the other side. And we are waiting to hear back
9 from them on that.

10 So we're -- I would say we're behind schedule under the
11 order. As you may recall, some of the certs came in late. And,
12 therefore, everything sort of -- it was a waterfall. And we're
13 falling behind.

14 But where we are now is we have received the certs, other
15 than from the three defendants that we have discussed previously:
16 Ray, Heimbach, and Mosely. We have raised some issues with those
17 certs that have yet to be addressed. But putting that aside, I
18 think the next big ticket item is to get the vendor contract in
19 place. And we are open to having, you know, meet and confer
20 discussions with defense counsel if they want to discuss the
21 contract. But we would like to get that in place as quickly as
22 possible, so we can start the imaging process.

23 THE COURT: Okay. Is there anything that we need to
24 -- you know, the contracts are an issue that you-all are working
25 on. Is there anything that we need to address about compliance

1 with the order, I guess in particular for Mr. Ray and Mr. Heimbach
2 on the certifications?

3 MS. TENZER: I don't know if we're going to address that
4 in the motion to withdraw. Those are still outstanding --

5 THE COURT: All right.

6 MS. TENZER: -- those certifications.

7 THE COURT: Mr. Kolenich, what is the status of those?

8 MR. KOLENICH: Judge, as I think I emailed to chambers,
9 Mr. Heimbach's response to the last court order was to terminate my
10 representation. So he has fired myself and Mr. Woodard and forbid
11 us to take any actions on his behalf. The Court will also note
12 that he hasn't called in today, even though I did transmit the time
13 and call-in information. So that's the status on Heimbach.

14 Mosely's status is well-known to the Court.

15 Mr. Ray's information, that is on me. I haven't
16 completed getting that information from Mr. Ray yet. He is fully
17 cooperating with the process. And we'll get that just as soon as
18 possible. And, of course, the contract issue, the statement of
19 work, is a separate issue. And we'll take that up with Ms. Tenzer.

20 THE COURT: Where -- Mr. Kolenich, it is news to me that
21 Heimbach has terminated your representation. I don't recall seeing
22 that.

23 MR. KOLENICH: Sorry, Your Honor. I emailed it -- I
24 thought I did -- to chambers. Maybe I sent it to the wrong one; I
25 don't know. I deal with many federal courts. But Mr. Heimbach did

1 fire me more than a week ago, myself and Mr. Woodard. And we are
2 explicitly forbidden from taking any further action on his behalf.

3 THE COURT: Okay.

4 All right. Did -- has anyone else seen that, that email?

5 MR. KOLENICH: I'll see who I sent it to, Judge. I
6 believe I copied plaintiffs on it. But if I didn't, then, again,
7 that's my fault.

8 THE COURT: Okay.

9 All right.

10 MR. LEVINE: We received it, Your Honor.

11 THE COURT: You did? Okay. I don't know if it --
12 somehow maybe a gremlin in my computer erased it before I saw it.
13 That certainly can happen as part of the shutdown.

14 Well, Mr. Kolenich, I mean, that's certainly --
15 obviously, if he has fired you, that changes things considerably
16 for the motion to withdraw.

17 You know, given that, Mr. Levine or Ms. Tenzer, do
18 you-all have a different position on the motion to withdraw as far
19 as Mr. Heimbach at this point? Are you still opposing it? It
20 seems like it would be proper.

21 MR. LEVINE: I don't think we'd take a position now, Your
22 Honor. I -- if he has been fired, he has been fired.

23 THE COURT: Yeah. You know, it is -- and that was
24 -- with -- Mr. Kolenich, with your previous motion to withdraw for
25 Elliot Kline, you know, I granted that because there had really

1 been a complete breakdown in communications. Here it sounds like
2 there has been a breakdown and also you have been terminated. So,
3 you know, I will certainly grant your motion to withdraw
4 Mr. Heimbach.

5 MR. KOLENICH: Thank you, Your Honor.

6 Now, Mr. Ray, of course, is on the phone.

7 THE COURT: Right.

8 MR. KOLENICH: And he -- I think he -- I'm sorry. Go
9 ahead, Judge.

10 THE COURT: Mr. Kolenich, can you -- I do want you to
11 send -- because now Mr. Heimbach is going to be pro se, and I don't
12 remember whether we -- the Court already has his contact
13 information or not, but we're going to need that so that we can
14 contact him. And plaintiffs' counsel will need that as well so
15 they can contact him directly.

16 MR. KOLENICH: I will send that, Your Honor.

17 THE COURT: Okay.

18 All right. Then, moving on to the motion to withdraw as
19 to Mr. Ray. Any change in circumstances?

20 MR. KOLENICH: He has still got the criminal motion
21 pending. I think we already acknowledged that we're going to hang
22 in through the discovery process at least. In the meantime, if
23 he's able to rectify the fee situation, then maybe we'll hang in
24 longer than that. So I think that the motion to withdraw as to
25 Mr. Ray is still in a taken-under-advisement status pending

1 discovery.

2 THE COURT: Okay. All right.

3 Well, I tell you, I will -- I'm fine doing that,
4 continuing to take it under advisement.

5 Mr. Kolenich, the more I think about it, I would -- you
6 know, Mr. Ray certainly has his obligations to you. And I would in
7 no way -- you know, if I were to deny your motion to withdraw, I
8 would in no way be endorsing his failure to pay you for your
9 services, but -- and also, in particular, to pay the costs
10 associated with, you know, depositions and things like that.

11 Mr. Ray, you know, Mr. Kolenich is -- he's staying in the
12 case and continuing to work on your behalf and incur fees, whether
13 -- whether or not you are paying those, you are still -- you are
14 still obligated to pay them. And, in particular, you know, when it
15 is time for your deposition, if there are costs associated with
16 getting transcripts and things like that, if you-all want them, I
17 think it is very important for you to -- you know, for you to pay
18 for any deposition transcripts, any hard costs that Mr. Kolenich
19 would have in representing you.

20 MR. RAY: Yes, sir. I understand that. And I do agree.
21 I am certainly not falling behind on my payments because I don't
22 want to pay Mr. Kolenich. Thus far this process has basically just
23 completely broken me financially. And I am trying to -- I'm at my
24 wit's end to do it, but I'm trying to come up with some way to
25 raise some money to pay Mr. Kolenich. I have been very happy with

1 his representation. And I would like, if at all possible, to be
2 able to keep him on through this whole process.

3 THE COURT: All right. And he has certainly -- in past
4 calls he has said that, you know, he doesn't think that you are
5 unwilling to pay. He thinks that it is difficult for you. And,
6 you know, I understand that. But I do think it is important that
7 you are paying -- certainly paying the costs associated with the
8 representation.

9 And, you know, Mr. Kolenich, when it -- when it gets to
10 -- gets to time for trial in this matter, you know, whether or not
11 I were to grant the motion to withdraw, I think that -- or not, you
12 know, the cost of coming to trial and the time for being there at
13 trial, you know, it is ultimately going to be the same. And I
14 don't know -- I imagine there would be some additional time that
15 you would have to devote to preparing Mr. Ray for trial, some new
16 conferences and meetings with him. But, you know, I don't think
17 that it is going to be so great, at least at this -- at least as
18 far as I can see things at this point, that it would -- that it
19 would warrant withdrawing from the matter.

20 I'm going to take the motion under advisement. I'll be
21 happy to hear you otherwise, if you think differently, at a later
22 time. But that's how I'm viewing the motion at this point.

23 MR. KOLENICH: Yes, sir. We'll get through discovery and
24 then see where we're at.

25 THE COURT: Okay.

1 All right. Well, then, is there anything else that we
2 need to take up today? Ms. Tenzer? Mr. Levine?

3 MR. LEVINE: Just in spite of defendants' counsel's best
4 efforts, you know, we -- this -- the discovery -- the electronic
5 discovery, these consents, all of this, Your Honor, is just moving
6 very slowly. I mean, we still don't have -- we still don't have
7 consents from Mosely, from Ray.

8 We don't -- the -- I'll just alert Your Honor we are very
9 likely to make a motion to compel Discord to produce. We have
10 found the production, after all of this, very wanting, incomplete.
11 We have tried to get a response of where we are before today to
12 report to the Court, but that isn't even complete. So we're not
13 even in a position to definitively tell you where we are with
14 Discord.

15 But it is -- all of this has taken just a lot of time.
16 And, of course, I'm sure the Court can appreciate our reluctance to
17 take -- take the defendants' depositions without basic documents
18 which constitute their writings and contemporaneous comments about
19 the events in question. So that's why we have been holding off.
20 And that's why, at least for the next several weeks, we're pretty
21 much going to continue to be delayed in scheduling the defendants.

22 But we -- we're trying to move as quickly as possible.
23 We would like to keep the trial date in July. And we certainly are
24 going to do our level best to complete the fact discovery in the
25 time that the Court has now allotted to us.

1 THE COURT: All right.

2 Mr. Kolenich, when will you have a certification from
3 Mr. Ray to provide to the plaintiffs' counsel?

4 MR. KOLENICH: Judge, I'll get that as soon next week as
5 I can. But what I hear Mr. Levine saying is that Discord is not
6 cooperating with them, the releases that we have provided
7 notwithstanding. And I --

8 THE COURT: Mr. Levine, has Discord -- you have gotten
9 some information from Discord, but not everything that you had been
10 expecting; is that right?

11 MR. LEVINE: Exactly, Your Honor.

12 THE COURT: And it --

13 MR. KOLENICH: I don't know then, Judge, if it makes
14 sense -- does it make more sense for the defendants themselves, the
15 actual Discord account holders, to try to get this stuff from
16 Discord? If plaintiffs would tell us who they are talking to over
17 there, which I asked them through Mr. Greene and I didn't get any
18 response, maybe we can get Discord more motivated. I don't know.

19 MR. LEVINE: I -- I don't -- I have no problem telling
20 defendants' lawyers who represents Discord. It is the law firm of
21 Perkins & Coie. But it is not so much that they don't like talking
22 to us. It is the electronic data doesn't seem to be talking to us,
23 Your Honor.

24 THE COURT: Okay. All right. Well, that's probably --

25 MR. LEVINE: I mean, if the defendants' lawyers think

1 they can help us in this process, I would love their assistance. I
2 just -- we haven't reached out to them for that purpose because I
3 don't really think that's where the problem is here, Your Honor.

4 THE COURT: Okay.

5 MR. KOLENICH: With Mr. Ray in particular, like we
6 discussed last time, that information we don't want it going to the
7 plaintiffs and then to us. It needs to come directly to me. So I
8 really need to -- you know, I need to send Mr. Ray's Discord
9 release directly to these people, not through Boies Schiller.

10 MR. LEVINE: Jim, I'm happy to give that to you. That
11 won't be a problem.

12 MR. KOLENICH: Okay. Yeah. Just email that to me, and
13 I'll send it in.

14 I have Mr. Ray's signature on the Discord release now. I
15 have it in my possession. I understand he hasn't sent you the ESI
16 stip either. So we'll get that very quickly next week.

17 THE COURT: All right.

18 All right. And I think -- Mr. Ray, I think that is
19 important to get that done quickly and have that done next week.

20 MR. RAY: Okay. I'm not -- I'm not sure I know what
21 -- I'm not sure I know what that is, but I'm willing to comply with
22 whatever the Court wants.

23 THE COURT: All right. Well, that's something you can
24 talk to Mr. Kolenich more about -- about that.

25 MR. RAY: Yes, sir.

1 THE COURT: And then, Mr. Levine, as to Mosely, you know,
2 he's representing himself. And so that's, you know, something that
3 if we need to get him on the phone with -- you know, with you, we
4 can set that -- we can set that up.

5 MR. LEVINE: Your Honor, perhaps we'll talk to Ms. Dotson
6 off-line and maybe get -- and request a date. That would be
7 -- that would be appreciated -- if the Court were to issue a
8 conference date for both sides and that generated from chambers,
9 that would be good.

10 THE COURT: Yeah. I'm happy to do that. And I'll
11 mention that to Ms. Dotson this afternoon.

12 MR. LEVINE: Thank you.

13 THE COURT: You know, counsel, if we need to put in some
14 hard deadlines for certain things to happen in discovery, you know,
15 then we can do that and we can set some regular compliance.
16 There's still time to have -- you know, we have got a number of
17 months left in discovery. So there's time to get this done. But I
18 understand there's a lot to do. So, you know, please get me
19 involved earlier rather than later.

20 MS. KAPLAN: Your Honor, this is Ms. Kaplan.

21 Discord -- we asked Discord -- following up on the
22 conversation we had on our last call, we asked Discord if they
23 would consent to any motion practice being before Your Honor. And
24 unfortunately they are refusing to consent to that. So any motion
25 practice, unfortunately, that we file against Discord will have to

1 be in the Northern District of California, which, obviously, is not
2 ideal. But they refuse to give that consent.

3 THE COURT: Okay. All right. Well, thanks for letting
4 me know that.

5 All right. And then, you know, I'm sure that -- I'm sure
6 that you-all can -- I know you don't want to take any of the
7 defendants' depositions at this point, but I imagine that you can
8 set them, just so that they are on the schedule, in the
9 anticipation that you are going to have discovery before those
10 depositions, just to get them on everybody's schedules, which I'm
11 sure are getting busier by the day.

12 MR. LEVINE: Okay.

13 THE COURT: All right.

14 Anything else?

15 Mr. Kolenich, anything?

16 MR. KOLENICH: No, sir.

17 THE COURT: All right. And, Mr. DiNucci, anything else?

18 MR. DiNUCCI: Nothing, Your Honor.

19 THE COURT: All right. And then as to those on mute,
20 Mr. Mills? Ms. Phillips?

21 MR. MILLS: No, Your Honor. Thank you.

22 THE COURT: All right. Well, thank you.

23 Well, counsel, Mr. Ray, thank you for calling in. And
24 have a good weekend.

25 UNIDENTIFIED VOICE: You too, Your Honor.

1 UNIDENTIFIED VOICE: Your Honor, are you going to issue
2 an order in respect of the April 17 date?

3 THE COURT: I will. I'll do a short order on the things
4 that we have discussed today.

5 UNIDENTIFIED VOICE: Thank you, Your Honor.

6 THE COURT: All right. Thank you. Take care. Bye.

7 (Thereupon, at 2:42 p.m. these proceedings were adjourned.)
8
9

10 I, court-approved transcriber, certify that the foregoing is a
11 correct transcript from the official electronic sound recording of
12 the proceedings in the above-entitled matter.
13

14 /s/ Carol Jacobs White January 11, 2019
15 Signature of Approved Transcriber Date
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